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HOUSE BILL NO. 805

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 22.1-289.035 through 22.1-289.040, 22.1-296.1, 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, and 63.2-1726 of the Code of Virginia, relating to barrier crimes.*

Patrons—Price, Bagby, Bennett-Parker, Bourne, Carr, Clark, Convirs-Fowler, Hope, Kory, Maldonado, McQuinn, Plum, Rasoul, Shin, Simon and Simonds

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 19.2-392.02, 22.1-289.035 through 22.1-289.040, 22.1-296.1, 32.1-126.01, 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-901.1, 63.2-1601.1, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, and 63.2-1726 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of

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58 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
59 position of employment whenever, in the interest of public welfare or safety and as authorized in the
60 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
61 with a conviction record would be compatible with the nature of the employment under consideration;

62 8. Public or private agencies when authorized or required by federal or state law or interstate
63 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
64 adult members of that individual's household, with whom the agency is considering placing a child or
65 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
66 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
67 the data shall not be further disseminated to any party other than a federal or state authority or court as
68 may be required to comply with an express requirement of law;

69 9. To the extent permitted by federal law or regulation, public service companies as defined in
70 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
71 personal contact with the public or when past criminal conduct of an applicant would be incompatible
72 with the nature of the employment under consideration;

73 10. The appropriate authority for purposes of granting citizenship and for purposes of international
74 travel, including, but not limited to, issuing visas and passports;

75 11. A person requesting a copy of his own criminal history record information as defined in
76 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
77 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
78 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
79 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
80 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
81 Solvers or Crime Line program as defined in § 15.2-1713.1;

82 12. Administrators and board presidents of and applicants for licensure or registration as a child
83 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
84 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
85 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing
86 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data
87 shall not be further disseminated by the facility or agency to any party other than the data subject, the
88 Commissioner of Social Services' representative or a federal or state authority or court as may be
89 required to comply with an express requirement of law for such further dissemination; however, nothing
90 in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative
91 from issuing written certifications regarding the results of a background check that was conducted before
92 July 1, 2021, in accordance with subsection *J* of § 22.1-289.035 or § 22.1-289.039;

93 13. The school boards of the Commonwealth for the purpose of screening individuals who are
94 offered or who accept public school employment and those current school board employees for whom a
95 report of arrest has been made pursuant to § 19.2-83.1;

96 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
97 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,
98 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth
99 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

100 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
101 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
102 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject
103 to the limitations set out in subsection E;

104 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
105 investigations of applicants for compensated employment in licensed assisted living facilities and
106 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

107 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth
108 in § 4.1-103.1;

109 18. The State Board of Elections and authorized officers and employees thereof and general registrars
110 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
111 voter registration, limited to any record of felony convictions;

112 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
113 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
114 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

115 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
116 Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders
117 under § 18.2-51.4, 18.2-266, or 18.2-266.1;

118 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
119 Department of Education, or the Department of Behavioral Health and Developmental Services for the

120 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
121 services;

122 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
123 Department for the purpose of determining an individual's fitness for employment pursuant to
124 departmental instructions;

125 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
126 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
127 records information on behalf of such governing boards or administrators pursuant to a written
128 agreement with the Department of State Police;

129 24. Public institutions of higher education and nonprofit private institutions of higher education for
130 the purpose of screening individuals who are offered or accept employment;

131 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
132 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
133 higher education, for the purpose of assessing or intervening with an individual whose behavior may
134 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
135 history record information obtained pursuant to this section or otherwise use any record of an individual
136 beyond the purpose that such disclosure was made to the threat assessment team;

137 26. Executive directors of community services boards or the personnel director serving the
138 community services board for the purpose of determining an individual's fitness for employment,
139 approval as a sponsored residential service provider, permission to enter into a shared living arrangement
140 with a person receiving medical assistance services pursuant to a waiver, or permission for any person
141 under contract with the community services board to serve in a direct care position on behalf of the
142 community services board pursuant to §§ 37.2-506 and 37.2-607;

143 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
144 determining an individual's fitness for employment, approval as a sponsored residential service provider,
145 permission to enter into a shared living arrangement with a person receiving medical assistance services
146 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to
147 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and
148 37.2-607;

149 28. The Commissioner of Social Services for the purpose of locating persons who owe child support
150 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the
151 name, address, demographics and social security number of the data subject shall be released;

152 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
153 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
154 purpose of determining if any applicant who accepts employment in any direct care position or requests
155 approval as a sponsored residential service provider, permission to enter into a shared living arrangement
156 with a person receiving medical assistance services pursuant to a waiver, or permission for any person
157 under contract with the provider to serve in a direct care position has been convicted of a crime that
158 affects his fitness to have responsibility for the safety and well-being of individuals with mental illness,
159 intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

160 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
161 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
162 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

163 31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House
164 Committee for Courts of Justice for the purpose of determining if any person being considered for
165 election to any judgeship has been convicted of a crime;

166 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
167 determining an individual's fitness for employment in positions designated as sensitive under Department
168 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

169 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
170 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
171 Violent Predators Act (§ 37.2-900 et seq.);

172 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
173 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
174 companies, for the conduct of investigations of applications for employment or for access to facilities,
175 by contractors, leased laborers, and other visitors;

176 35. Any employer of individuals whose employment requires that they enter the homes of others, for
177 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

178 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
179 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
180 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,

181 subject to the restriction that the data shall not be further disseminated by the agency to any party other
182 than a federal or state authority or court as may be required to comply with an express requirement of
183 law for such further dissemination, subject to limitations set out in subsection G;

184 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
185 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
186 or have accepted a position related to the provision of transportation services to enrollees in the
187 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
188 program administered by the Department of Medical Assistance Services;

189 38. The State Corporation Commission for the purpose of investigating individuals who are current
190 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
191 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of
192 Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in
193 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19,
194 or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such
195 information to the applicant or its designee;

196 39. The Department of Professional and Occupational Regulation for the purpose of investigating
197 individuals for initial licensure pursuant to § 54.1-2106.1;

198 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
199 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
200 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
201 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

202 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

203 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
204 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

205 43. The Department of Education or its agents or designees for the purpose of screening individuals
206 seeking to enter into a contract with the Department of Education or its agents or designees for the
207 provision of child care services for which child care subsidy payments may be provided;

208 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
209 a juvenile's household when completing a predispositional or postdispositional report required by §
210 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

211 45. The State Corporation Commission, for the purpose of screening applicants for insurance
212 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

213 46. Administrators and board presidents of and applicants for licensure or registration as a child day
214 program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
215 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
216 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
217 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the
218 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's
219 representative, or a federal or state authority or court as may be required to comply with an express
220 requirement of law for such further dissemination; however, nothing in this subdivision shall be
221 construed to prohibit the Superintendent of Public Instruction's representative from issuing written
222 certifications regarding the results of prior background checks in accordance with subsection *J* 1 of
223 § 22.1-289.035 or § 22.1-289.039; and

224 47. *The Department of Health for the purpose of determining whether an individual has been*
225 *convicted of a barrier crime as defined in § 19.2-392.02 or for the purpose of conducting an*
226 *investigation pursuant to the provisions of the Department of Health's waiver process for individuals*
227 *who have been convicted of a barrier crime and who are seeking employment opportunities; and*

228 48. Other entities as otherwise provided by law.

229 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
230 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
231 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
232 designated in the order on whom a report has been made under the provisions of this chapter.

233 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
234 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
235 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
236 copy of conviction data covering the person named in the request to the person making the request;
237 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
238 making of such request. A person receiving a copy of his own conviction data may utilize or further
239 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
240 subject, the person making the request shall be furnished at his cost a certification to that effect.

241 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
242 section shall be limited to the purposes for which it was given and may not be disseminated further,

243 except as otherwise provided in subdivision A 46.

244 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
245 history record information for employment or licensing inquiries except as provided by law.

246 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
247 Exchange prior to dissemination of any criminal history record information on offenses required to be
248 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
249 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
250 where time is of the essence and the normal response time of the Exchange would exceed the necessary
251 time period. A criminal justice agency to whom a request has been made for the dissemination of
252 criminal history record information that is required to be reported to the Central Criminal Records
253 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
254 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
255 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

256 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
257 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
258 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

259 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
260 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange
261 for any offense specified in § 63.2-1720.

262 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
263 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
264 definition of barrier crime in § 19.2-392.02.

265 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
266 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
267 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
268 the request to the employer or prospective employer making the request, provided that the person on
269 whom the data is being obtained has consented in writing to the making of such request and has
270 presented a photo-identification to the employer or prospective employer. In the event no conviction data
271 is maintained on the person named in the request, the requesting employer or prospective employer shall
272 be furnished at his cost a certification to that effect. The criminal history record search shall be
273 conducted on forms provided by the Exchange.

274 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
275 information pursuant to the rules of court for obtaining discovery or for review by the court.

276 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**
277 **employees or volunteers providing care to children or the elderly or disabled.**

278 A. For purposes of this section:

279 "Barrier crime" means (i) a ~~felony violation of § 16.1-253.2~~; any violation of § 18.2-31, 18.2-32,
280 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony
281 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,
282 or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or
283 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,
284 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, ~~18.2-56, 18.2-56.1,~~
285 ~~18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02,~~ 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, ~~18.2-60,~~ or any
286 violation of 18.2-60.1; any felony violation of § ~~18.2-60.3 or 18.2-60.4~~; any violation of § 18.2-61,
287 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2,
288 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83,
289 18.2-84, 18.2-85, 18.2-86, 18.2-87, ~~18.2-87.1, or 18.2-88~~; any felony violation of § ~~18.2-279, 18.2-280,~~
290 ~~18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2~~; any violation of § 18.2-289, 18.2-290,
291 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § ~~18.2-346.01, 18.2-348, or 18.2-349~~; any
292 violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § ~~18.2-361~~;
293 any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4,
294 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379,
295 18.2-386.1, or 18.2-386.2; any felony violation of § ~~18.2-405 or 18.2-406~~; any violation of § 18.2-408,
296 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1,
297 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917,
298 or 53.1-203; any violation of subsection A or B of § 18.2-47; any violation of subsection B of
299 § 18.2-361; any felony violation of § 16.1-253.2, 18.2-46.2, 18.2-46.3, 18.2-46.3:1, 18.2-46.3:3,
300 18.2-56.1, 18.2-57, 18.2-57.02, 18.2-60, 18.2-60.3, 18.2-60.4, 18.2-279, 18.2-280, 18.2-281, 18.2-282,
301 18.2-282.1, 18.2-286.1, 18.2-287, 18.2-346.01, 18.2-348, 18.2-349, 18.2-405, or 18.2-406; or any
302 substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89,
303 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of

304 another jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02,
305 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258,
306 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another
307 jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of
308 another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to
309 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including
310 any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1
311 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's
312 requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to
313 § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for
314 which registration in a sex offender and crimes against minors registry is required under the laws of the
315 jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii),
316 (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

317 "Barrier crime information" means the following facts concerning a person who has been arrested for,
318 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the
319 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief
320 description of the barrier crime or offenses for which the person has been arrested or has been
321 convicted, the disposition of the charge, and any other information that may be useful in identifying
322 persons arrested for or convicted of a barrier crime.

323 "Care" means the provision of care, treatment, education, training, instruction, supervision, or
324 recreation to children or the elderly or disabled.

325 "Department" means the Department of State Police.

326 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or
327 seeks to volunteer for a qualified entity.

328 "Identification document" means a document made or issued by or under the authority of the United
329 States government, a state, a political subdivision of a state, a foreign government, political subdivision
330 of a foreign government, an international governmental or an international quasi-governmental
331 organization that, when completed with information concerning a particular individual, is of a type
332 intended or commonly accepted for the purpose of identification of individuals.

333 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may
334 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity
335 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised
336 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
337 operate a qualified entity.

338 "Qualified entity" means a business or organization that provides care to children or the elderly or
339 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
340 pursuant to subdivision A 7 of § 22.1-289.030.

341 B. A qualified entity may request the Department of State Police to conduct a national criminal
342 background check on any provider who is employed by such entity. No qualified entity may request a
343 national criminal background check on a provider until such provider has:

344 1. Been fingerprinted; and

345 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and
346 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
347 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
348 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
349 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a
350 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background
351 check report, to challenge the accuracy and completeness of any information contained in any such
352 report, and to obtain a prompt determination as to the validity of such challenge before a final
353 determination is made by the Department; and (v) a notice to the provider that prior to the completion
354 of the background check the qualified entity may choose to deny the provider unsupervised access to
355 children or the elderly or disabled for whom the qualified entity provides care.

356 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
357 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in
358 subsection B, the Department shall make a determination whether the provider has been convicted of or
359 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
360 crime information, the Department shall access the national criminal history background check system,
361 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
362 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
363 Department. If the Department receives a background report lacking disposition data, the Department
364 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
365 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry

366 within 15 business days.

367 D. Any background check conducted pursuant to this section for a provider employed by a private
 368 entity shall be screened by the Department of State Police. If the provider has been convicted of or is
 369 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not
 370 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly
 371 or disabled of such conviction or indictment.

372 E. Any background check conducted pursuant to this section for a provider employed by a
 373 governmental entity shall be provided to that entity.

374 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
 375 national criminal background check, the Department and the Federal Bureau of Investigation may each
 376 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
 377 with the fingerprints.

378 G. The failure to request a criminal background check pursuant to subsection B shall not be
 379 considered negligence per se in any civil action.

380 *H. The State Board of Behavioral Health and Developmental Services, the Board of Education, the*
 381 *State Board of Health, and the State Board of Social Services shall each adopt regulations that develop*
 382 *and implement a waiver process for individuals who have been convicted of a barrier crime pursuant to*
 383 *subsection A and who serve in a position or seek to serve in a position with any qualified entity subject*
 384 *to the regulations of the board. The regulations setting out the process by which a barrier crime may be*
 385 *waived shall include the following information: (i) if applicable, which barrier crimes are eligible to be*
 386 *waived; (ii) whether there is a requirement regarding how much time has elapsed since the conviction;*
 387 *(iii) if an individual is granted a waiver, procedures governing how such information shall be*
 388 *documented within the individual's record of employment or volunteer service and disseminated to the*
 389 *individual and appropriate persons with the Department of Behavioral Health and Developmental*
 390 *Services, Education, Health, or Social Services, as may be appropriate; (iv) criteria used to review an*
 391 *individual's waiver; and (v) any other factors the board deems necessary for consideration. The*
 392 *Departments of Behavioral Health and Developmental Services, Education, Health, and Social Services*
 393 *shall each publish information about the agency's waiver process in an easily accessible format on a*
 394 *website maintained by the department. If an individual is granted a waiver, the department that granted*
 395 *such waiver shall notify the Department no later than 10 business days after the department has issued*
 396 *to such individual in writing the decision about the waiver. If an individual granted a waiver pursuant*
 397 *to this section is convicted of a separate and subsequent barrier crime after receiving such waiver, he*
 398 *shall notify the department of such conviction no later than 10 business days after conviction. Any*
 399 *subsequent conviction of a barrier crime shall require a separate waiver. A waiver granted to an*
 400 *individual by one department shall not be transferrable to a position under another department, but*
 401 *proof of receipt of a waiver from one department shall be considered positively by another department*
 402 *when reviewing an application for a waiver. Upon request, a department shall assist an individual with*
 403 *submitting proof of receipt of a waiver by the department in a timely manner when such individual is*
 404 *applying for a waiver from another department. If an individual's application for a waiver is denied, the*
 405 *department shall state the basis for denial in writing and provide such explanation to the individual.*

406 *If an individual applies for and is denied a waiver pursuant to this subsection, he may request an*
 407 *informal fact-finding proceeding pursuant to § 2.2-4019. If an individual does not request such*
 408 *proceeding, the initial denial of the waiver becomes final after 30 days. If an individual remains*
 409 *aggrieved by a case decision after an informal fact-finding proceeding, he may seek review of the case*
 410 *decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act. An*
 411 *individual who remains aggrieved by (i) an initial denial of a waiver after 30 days, (ii) an informal*
 412 *fact-finding decision, or (iii) by a court decision, may reapply for a waiver from the department that*
 413 *denied his waiver application upon a showing that there has been a material change in circumstances,*
 414 *as that term is defined by each board in its regulations.*

415 *I. If an individual is granted a waiver pursuant to subsection H, no business screening service as*
 416 *defined in § 19.2-392.16 shall disseminate information regarding the barrier crime conviction that was*
 417 *the subject of such waiver unless a business screening service indicates clearly that a waiver was*
 418 *granted by any of the state boards listed in subsection H. Any business screening service that violates*
 419 *this subsection shall be subject to the penalty provisions in subsection G of § 19.2-392.16.*

420 *J. If an individual is granted a waiver pursuant to subsection H, a qualified entity shall not*
 421 *discharge or in any other manner discriminate against an individual for any reason concerning solely a*
 422 *conviction of a barrier crime that was subject to a waiver. Any individual who is discharged or in any*
 423 *other manner discriminated against in a manner prohibited by this subsection may initiate a claim*
 424 *against such qualified entity for not more than 12 months of lost wages, plus costs and reasonable*
 425 *attorney fees.*

426 *K. Except for (i) an application cover sheet containing only the name of the applicant, the date the*

427 application was submitted to the Department of Behavioral Health and Developmental Services,
 428 Education, Health, or Social Services, and, if applicable, the position for which the individual is
 429 applying or has applied and (ii) whether such waiver has been granted or denied or if such application
 430 is pending, an individual's application for a waiver, any documents related to such application, and any
 431 written basis for a decision about such waiver shall be exempt from the provisions of the Virginia
 432 Freedom of Information Act (§ 2.2-3700 et seq.), shall be considered confidential, and shall not be
 433 disclosed unless specifically authorized by another provision of law, except that access shall not be
 434 denied to the person who is subject thereof.

435 **§ 22.1-289.035. Licensed child day centers, family day homes, and family day systems;
 436 employment for compensation or use as volunteers of persons convicted of or found to have
 437 committed certain offenses prohibited; national background check required; penalty.**

438 A. No child day center, family day home, or family day system licensed in accordance with the
 439 provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered
 440 family day home, family day home approved by a family day system, or child day center, family day
 441 home, or child day program that enters into a contract with the Department or its agents or designees to
 442 provide child care services funded by the Child Care and Development Block Grant shall hire for
 443 compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with,
 444 in control of, or supervising children any person who (i) has been convicted of any barrier crime as
 445 defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or
 446 outside the Commonwealth. *However, the Board shall adopt regulations that establish a waiver process*
 447 *pursuant to subsection H of § 19.2-392.02 whereby persons may apply for employment despite*
 448 *convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If a waiver is*
 449 *granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall*
 450 *apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.* All
 451 applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a
 452 background check in accordance with subsection B prior to employment or beginning to serve as a
 453 volunteer and every five years thereafter.

454 B. Any individual required to undergo a background check in accordance with subsection A shall:

455 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
 456 the subject of pending charges for any offense within or outside the Commonwealth and whether he has
 457 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

458 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2
 459 of § 19.2-392.02;

460 3. Authorize the child day center, family day home, or family day system described in subsection A
 461 to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for
 462 any founded complaint of child abuse or neglect against him; and

463 4. Authorize the child day center, family day home, or family day system described in subsection A
 464 to obtain a copy of the results of a criminal history record information check, a sex offender registry
 465 check, and a search of the child abuse and neglect registry or equivalent registry from any state in
 466 which the individual has resided in the preceding five years.

467 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2
 468 shall be forwarded by the Department or its designee or, in the case of a child day program operated by
 469 a local government, may be forwarded by the local law-enforcement agency through the Central
 470 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national
 471 criminal history record information regarding such applicant. Upon receipt of an applicant's record or
 472 notification that no record exists, the Central Criminal Records Exchange shall forward the information
 473 to the Department or its designee, and the Department or its designee shall report to the child day center
 474 or family day home whether the applicant is eligible to have responsibility for the safety and well-being
 475 of children. In cases in which the record forwarded to the Department or its designee is lacking
 476 disposition data, the Department or its designee shall conduct research in whatever state and local
 477 recordkeeping systems are available in order to obtain complete data before reporting to the child day
 478 center, family day home, or family day system.

479 C. The child day center, family day home, or family day system described in subsection A shall
 480 inform every individual required to undergo a background check pursuant to this section that he is
 481 entitled to obtain a copy of any background check report and to challenge the accuracy and
 482 completeness of any such report and obtain a prompt resolution before a final determination is made of
 483 the individual's eligibility to have responsibility for the safety and well-being of children.

484 D. Any person making a materially false statement regarding the sworn statement or affirmation
 485 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

486 E. Further dissemination of the background check information is prohibited (i) other than to the
 487 Superintendent's representative or a federal or state authority or court as may be required to comply with
 488 an express requirement of law for such further dissemination or (ii) except as provided in subsection J.

489 F. A person who complies in good faith with the provisions of this section shall not be liable for any
 490 civil damages for any act or omission in the performance of duties under this section unless the act or
 491 omission was the result of gross negligence or willful misconduct.

492 G. ~~Notwithstanding the provisions of subsection A, a child day center may hire for compensated~~
 493 ~~employment persons who have been convicted of not more than one misdemeanor offense under~~
 494 ~~§ 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have~~
 495 ~~elapsed following the conviction, unless the person committed such offense while employed in a child~~
 496 ~~day center or the object of the offense was a minor.~~

497 H. Fees charged for the processing and administration of background checks pursuant to this section
 498 shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and
 499 administration.

500 I. ~~H.~~ Any individual required to undergo a background check pursuant to subsection A who is (i)
 501 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
 502 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
 503 center, family day home, or family day system described in subsection A of such conviction or finding.

504 J. ~~I.~~ Notwithstanding the provisions of subsection A, a background check shall not be required for
 505 any individual who has completed a background check under the provisions of this section within the
 506 previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the
 507 results of such background check indicated that the individual had not been convicted of any barrier
 508 crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or
 509 neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the
 510 previous 180 days, employed by or a volunteer at a child day center, family day home, family day
 511 system, or child day program described in subsection A. Prior to hiring or allowing to volunteer any
 512 individual required to undergo a background check pursuant to subsection A without the completion of a
 513 background check under the provisions of subsection B, the child day center, family day home, family
 514 day system, or child day program shall, upon the individual's written consent, obtain written certification
 515 from the Department or its designee that such individual satisfies all requirements set forth in this
 516 subsection and is eligible to serve as an employee or volunteer. If the individual meets all requirements
 517 set forth in this subsection and is eligible to serve as an employee or volunteer at the child day center,
 518 family day home, family day system, or child day program, the written certification shall also state the
 519 next date by which another background check for such person shall be completed in accordance with
 520 subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or
 521 founded complaint of child abuse or neglect or any other information about the individual.

522 **§ 22.1-289.036. Background check upon application for licensure, registration, or approval as**
 523 **child day center, family day home, or family day system; penalty.**

524 A. Every (i) applicant for licensure as a child day center, family day home, or family day system,
 525 registration as a family day home, or approval as a family day home by a family day system; (ii) agent
 526 of an applicant for licensure as a child day center, family day home, or family day system, registration
 527 as a family day home, or approval as a family day home by a family day system at the time of
 528 application who is or will be involved in the day-to-day operations of the child day center, family day
 529 home, or family day system or who is or will be alone with, in control of, or supervising one or more
 530 of the children; and (iii) adult living in such child day center or family day home shall undergo a
 531 background check in accordance with subsection B prior to issuance of a license as a child day center,
 532 family day home, or family day system, registration as a family day home, or approval as a family day
 533 home by a family day system and every five years thereafter.

534 B. Every person required to undergo a background check pursuant to subsection A shall:

535 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
 536 the subject of any pending criminal charges for any offense within or outside the Commonwealth and
 537 whether or not he has been the subject of a founded complaint of child abuse or neglect within or
 538 outside the Commonwealth;

539 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2
 540 of § 19.2-392.02;

541 3. Authorize the child day center, family day home, or family day system specified in subsection A
 542 to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for
 543 any founded complaint of child abuse or neglect against him; and

544 4. Authorize the child day center, family day home, or family day system described in subsection A
 545 to obtain a copy of the results of a criminal history record information check, a sex offender registry
 546 check, and a search of the child abuse and neglect registry or equivalent registry from any state in
 547 which the individual has resided in the preceding five years.

548 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
 549 forwarded by the Department or its designee or, in the case of a child day program operated by a local

550 government, may be forwarded by the local law-enforcement agency through the Central Criminal
551 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
552 history record information regarding the individual. Upon receipt of an individual's record or notification
553 that no record exists, the Central Criminal Records Exchange shall forward the information to the
554 Department or its designee. The Department or its designee shall report to the child day center, family
555 day home, or family day system described in subsection A as to whether the individual is eligible to
556 have responsibility for the safety and well-being of children. In cases in which the record forwarded to
557 the Department or its designee is lacking disposition data, the Department or its designee shall conduct
558 research in whatever state and local recordkeeping systems are available in order to obtain complete
559 data.

560 C. If any person specified in subsection A required to have a background check (i) has been
561 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint
562 of child abuse or neglect within or outside the Commonwealth, and such person has not been (a)
563 granted a waiver by the Superintendent pursuant to § 22.1-289.038 or (b) granted a waiver pursuant to
564 subsection A of § 22.1-289.035, no license as a child day center, family day home, or family day
565 system or registration as a family day home shall be granted by the Superintendent and no approval as a
566 family day home shall be granted by the family day system.

567 D. Information from a search of the central registry maintained pursuant to § 63.2-1515 and any
568 child abuse and neglect registry or equivalent registry maintained by any other state in which the
569 applicant, agent, or adult has resided in the preceding five years, authorized in accordance with
570 subdivision B 3, shall be obtained prior to issuance of a license as a child day center, family day home,
571 or family day system, registration as a family day home, or approval as a family day home by a family
572 day system.

573 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
574 day center, family day home, or family day system, or shall be alone with, in control of, or supervising
575 one or more children, without first having completed any required background check pursuant to
576 subsection B.

577 F. Any person making a materially false statement regarding the sworn statement or affirmation
578 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

579 G. If an individual is denied licensure, registration, or approval because of information from the
580 central registry or any child abuse and neglect registry or equivalent registry maintained by any other
581 state, or convictions appearing on his criminal history record, the Superintendent shall provide a copy of
582 the information obtained from the central registry, any child abuse and neglect registry or equivalent
583 registry maintained by any other state, or the Central Criminal Records Exchange to the individual.

584 H. Further dissemination of the background check information is prohibited other than to the
585 Superintendent's representative or a federal or state authority or court as may be required to comply with
586 an express requirement of law for such further dissemination.

587 I. Fees charged for the processing and administration of background checks pursuant to this section
588 shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and
589 administration.

590 J. For the purposes of this section, "agent" means a person who is authorized to act on behalf of the
591 applicant or licensee.

592 **§ 22.1-289.037. Revocation or denial of renewal based on background checks; failure to obtain**
593 **background check.**

594 A. The Superintendent may revoke or deny renewal of a license or registration of a child day
595 program or family day system, and a family day system may revoke the approval of a family day home,
596 if the child day program, family day system, or approved family day home has knowledge that a person
597 specified in § 22.1-289.035 or 22.1-289.036 required to have a background check (i) has been convicted
598 of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child
599 abuse or neglect within or outside the Commonwealth, and such person has not been (a) granted a
600 waiver by the Superintendent pursuant to § 22.1-289.038 or is not subject to the exceptions in subsection
601 G (b) granted a waiver pursuant to subsection A of § 22.1-289.035, and the agency or home refuses to
602 separate such person from employment or service or allows the household member to continue to reside
603 in the home.

604 B. Failure to obtain background checks pursuant to §§ 22.1-289.035 and 22.1-289.036 shall be
605 grounds for denial, revocation, or termination of a license, registration, or approval or any contract with
606 the Department or its agents or designees or a local department of social services to provide child care
607 services to clients of the Department or its agents or designees or the local department of social services.
608 No violation shall occur if the family day system, family day home, or child day center has applied for
609 the background check timely and it has not been obtained due to administrative delay. The provisions of
610 this section shall be enforced by the Department.

611 **§ 22.1-289.038. Child day programs and family day systems; criminal conviction and waiver.**

612 A. Any person who seeks to operate, volunteer, or work at a child day program or family day system
 613 and who is disqualified because of a criminal conviction or a criminal conviction in the background
 614 check of any other adult living in a family day home regulated by the Department, pursuant to
 615 § 22.1-289.035, 22.1-289.036, or 22.1-289.039, *and such person has not received a waiver pursuant to*
 616 *subsection A of § 22.1-289.035, he may apply in writing for a waiver from the Superintendent. The*
 617 *Superintendent may grant a waiver if the Superintendent determines that (i) the person is of good moral*
 618 *character and reputation and (ii) the waiver would not adversely affect the safety and well-being of*
 619 *children in the person's care. The Superintendent shall not grant a waiver to any person who has been*
 620 *convicted of any barrier crime as defined in § 19.2-392.02. However, the Superintendent may grant a*
 621 *waiver to a family day home licensed or registered by the Department if any other adult living in the*
 622 *home of the applicant or provider has been convicted of not more than one misdemeanor offense under*
 623 *§ 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,*
 624 *provided that (a) five years have elapsed following the conviction and (b) the Department has conducted*
 625 *a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in*
 626 *the home and (2) a determination that the offender is now a person of good moral character and*
 627 *reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute*
 628 *provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and*
 629 *18.2-57.2, or any substantially similar offense under the laws of another jurisdiction. Any waiver granted*
 630 *under this section shall be available for inspection by the public. The child day program or family day*
 631 *system shall notify in writing every parent and guardian of the children in its care of any waiver granted*
 632 *for its operators, employees, or volunteers. Waivers for any barrier crime as defined in § 19.2-392.02*
 633 *are regulated by subsection A of § 22.1-289.035.*

634 B. The Board shall adopt regulations to implement the provisions of this section.

635 **§ 22.1-289.039. Records check by unlicensed child day center; penalty.**

636 Any child day center that is exempt from licensure pursuant to § 22.1-289.031 shall require all
 637 applicants for employment, employees, applicants to serve as volunteers, and volunteers and any other
 638 person who is expected to be alone with one or more children enrolled in the child day center to obtain
 639 a background check in accordance with § 22.1-289.035. A child day center that is exempt from licensure
 640 pursuant to § 22.1-289.031 shall refuse employment or service to any person who (i) has been convicted
 641 of any barrier crime as defined in § 19.2-392.02 *unless such person has been granted a waiver pursuant*
 642 *to subsection A of § 22.1-289.035 or (ii) is the subject of a founded complaint of child abuse or neglect*
 643 *within or outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian*
 644 *who may be left alone with his own child. For purposes of this section, convictions shall include prior*
 645 *adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would*
 646 *have been a felony if committed by an adult within or outside the Commonwealth. Further dissemination*
 647 *of the information provided to the facility is prohibited, except as otherwise provided in subsection I*
 648 *of § 22.1-289.035.*

649 **§ 22.1-289.040. Child day centers and family day homes receiving federal, state, or local child**
 650 **care funds; eligibility requirements.**

651 A. Whenever any child day center or family day home that has not met the requirements of
 652 §§ 22.1-289.035, 22.1-289.036, and 22.1-289.039 applies to enter into a contract with the Department or
 653 its agents or designees to provide child care services to clients of the Department or its agents or
 654 designees, the Department or its agents or designees shall require a background check, at the time of
 655 application to enter into a contract and every five years thereafter, of (i) the applicant; any agents
 656 involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or
 657 more of the children; and any other adult living in a family day home pursuant to § 22.1-289.036; and
 658 (ii) all applicants for employment, employees, applicants to serve as volunteers, and volunteers pursuant
 659 to § 22.1-289.035. The child day center or family day home shall not be permitted to enter into a
 660 contract with the Department or its agents or designees for child care services when an applicant; any
 661 employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent
 662 alone with, in control of, or supervising one or more children; or any other adult living in a family day
 663 home ~~(i)~~ (a) has been convicted of any barrier crime as defined in § 19.2-392.02 *unless such applicant,*
 664 *employee, prospective employee, volunteer, agent involved in the day-to-day operation, agent alone with,*
 665 *in control of, or supervising one or more children, or any other adult living in a family day home has*
 666 *been granted a waiver pursuant to subsection A of § 22.1-289.035 or ~~(ii)~~ (b) is the subject of a founded*
 667 *complaint of child abuse or neglect within or outside the Commonwealth. Further dissemination of the*
 668 *information provided to the facility, beyond dissemination to the Department or its agents or designees*
 669 *is prohibited.*

670 B. Every child day center or family day home that enters into a contract with the Department or its
 671 agents or designees to provide child care services to clients of the Department or its agents or designees
 672 that is funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with

673 all requirements established by federal law and regulations.

674 **§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required;**
675 **penalty.**

676 A. As a condition of employment for all of its public school employees, whether full-time or
677 part-time, permanent, or temporary, every school board shall require on its application for employment
678 certification of whether the applicant has been convicted of any violent felony set forth in the definition
679 of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical
680 or sexual abuse, or rape of a child; or any crime of moral turpitude. Any individual making a materially
681 false statement regarding any such offense is guilty of a Class 1 misdemeanor and, in the case of a
682 teacher, upon conviction, the fact of such conviction is grounds for the Board to revoke his license to
683 teach.

684 B. No school board shall employ any individual who has been convicted of any violent felony set
685 forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the
686 sexual molestation, physical or sexual abuse, or rape of a child.

687 C. Any school board may employ any individual who has been convicted of any felony or crime of
688 moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02
689 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that
690 in the case of a felony conviction, such individual has had his civil rights restored by the Governor. *The*
691 *waiver process and other requirements set out in subsections H, I, J, and K of §19.2-392.02 shall not*
692 *apply to this section or school boards in any manner.*

693 D. Every school board shall also require on its application for employment, as a condition of
694 employment requiring direct contact with students, whether full-time or part-time, permanent, or
695 temporary, certification that the applicant has not been the subject of a founded case of child abuse and
696 neglect. Any person making a materially false statement regarding a finding of child abuse and neglect
697 is guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction is grounds for the
698 Board of Education to revoke such person's license to teach.

699 E. As a condition of awarding a contract for the provision of services that require the contractor or
700 his employees to have direct contact with students on school property during regular school hours or
701 during school-sponsored activities, the school board shall require the contractor to provide certification
702 of whether any individual who will provide such services has been convicted of any violent felony set
703 forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the
704 sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude.

705 Any individual making a materially false statement regarding any such offense is guilty of a Class 1
706 misdemeanor and, upon conviction, the fact of such conviction is grounds for the revocation of the
707 contract to provide such services and, when relevant, the revocation of any license required to provide
708 such services. School boards shall not be liable for materially false statements regarding the
709 certifications required by this subsection.

710 This subsection shall not apply to a contractor or his employees providing services to a school
711 division in an emergency or exceptional situation, such as when student health or safety is endangered
712 or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable,
713 when it is reasonably anticipated that the contractor or his employees will have no direct contact with
714 students.

715 F. No school board shall award a contract for the provision of services that require the contractor or
716 his employees to have direct contact with students on school property during regular school hours or
717 during school-sponsored activities when any individual who provides such services has been convicted
718 of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any
719 offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

720 G. Any school board may award a contract for the provision of services that require the contractor or
721 his employees to have direct contact with students on school property during regular school hours or
722 during school-sponsored activities when any individual who provides such services has been convicted
723 of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in
724 subsection A of § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or
725 rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights
726 restored by the Governor.

727 **§ 32.1-126.01. Employment for compensation of persons convicted of barrier crimes prohibited;**
728 **criminal records check required; suspension or revocation of license.**

729 A. A licensed nursing home shall not hire for compensated employment persons who have been
730 convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.
731 However, a licensed nursing home may hire an applicant who has been convicted of one such offense
732 punishable as a misdemeanor that does not involve abuse or neglect if five years have elapsed following
733 the conviction the Board shall adopt regulations that establish a waiver process pursuant to subsection
734 H of § 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth

735 *in clause (i) of the definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such*
 736 *waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver*
 737 *applications shall be subject to the provisions of subsection K of § 19.2-392.02.*

738 Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn
 739 statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether
 740 within or outside the Commonwealth. Any person making a materially false statement when providing
 741 such sworn statement or affirmation regarding any such offense is guilty upon conviction of a Class 1
 742 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited
 743 other than to a federal or state authority or court as may be required to comply with an express
 744 requirement of law for such further dissemination.

745 A nursing home shall, within 30 days of employment, obtain for any compensated employees an
 746 original criminal record clearance with respect to convictions for offenses specified in this section or an
 747 original criminal history record from the Central Criminal Records Exchange. However, no employee
 748 shall be permitted to work in a position that involves direct contact with a patient until an original
 749 criminal record clearance or original criminal history record has been received, unless such person works
 750 under the direct supervision of another employee for whom a background check has been completed in
 751 accordance with the requirements of this section. The provisions of this section shall be enforced by the
 752 Commissioner. If an applicant is denied employment because of convictions appearing on his criminal
 753 history record, the nursing home shall provide a copy of the information obtained from the Central
 754 Criminal Records Exchange to the applicant.

755 The provisions of this section shall not apply to volunteers who work with the permission or under
 756 the supervision of a person who has received a clearance pursuant to this section.

757 B. A person who complies in good faith with the provisions of this section shall not be liable for
 758 any civil damages for any act or omission in the performance of duties under this section unless the act
 759 or omission was the result of gross negligence or willful misconduct.

760 C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this
 761 section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

762 **§ 32.1-162.9:1. Employment for compensation of persons convicted of barrier crimes prohibited;**
 763 **criminal records check required; drug testing; suspension or revocation of license.**

764 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
 765 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in
 766 § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of any
 767 offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

768 However, a home care organization or hospice may hire an applicant who has been convicted of one
 769 such offense punishable as a misdemeanor that does not involve abuse or neglect if five years have
 770 elapsed since the conviction the Board shall adopt regulations that establish a waiver process pursuant
 771 to subsection H of § 19.2-392.02 whereby persons may apply for employment despite convictions of
 772 offenses set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. If a waiver is granted
 773 pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All
 774 waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.

775 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any
 776 home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any
 777 licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or
 778 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or
 779 outside the Commonwealth. Any person making a materially false statement when providing such sworn
 780 statement or affirmation regarding any such offense is guilty upon conviction of a Class 1 misdemeanor.
 781 Further dissemination of the information provided pursuant to this section is prohibited other than to a
 782 federal or state authority or court as may be required to comply with an express requirement of law for
 783 such further dissemination.

784 Such home care organization or hospice shall, within 30 days of employment, obtain for any
 785 compensated employees an original criminal record clearance with respect to convictions for offenses
 786 specified in this section or an original criminal history record from the Central Criminal Records
 787 Exchange. However, no employee shall be permitted to work in a position that involves direct contact
 788 with a patient until an original criminal record clearance or original criminal history record has been
 789 received, unless such person works under the direct supervision of another employee for whom a
 790 background check has been completed in accordance with the requirements of this section. The
 791 provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment
 792 because of convictions appearing on his criminal history record, the home care organization or hospice
 793 shall provide a copy of the information obtained from the Central Criminal Records Exchange to the
 794 applicant.

795 The provisions of this section shall not apply to volunteers who work with the permission or under

796 the supervision of a person who has received a clearance pursuant to this section.

797 B. Notwithstanding any other provision of law, a licensed home care agency, a home care
798 organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8, or any licensed hospice
799 as defined in § 32.1-162.1 that provides services to individuals receiving services under the state plan for
800 medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance
801 Services (i) whether a criminal history background check has been performed on an employee of the
802 home care agency in accordance with this section and (ii) whether such person is eligible for
803 employment.

804 C. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
805 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining
806 a drug-free workplace, which may include drug testing when the employer has cause to believe that the
807 person has engaged in the use of illegal drugs and periodically during the course of employment. All
808 positive results from drug testing administered pursuant to this section shall be reported to the health
809 regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

810 D. A person who complies in good faith with the provisions of this section shall not be liable for
811 any civil damages for any act or omission in the performance of duties under this section unless the act
812 or omission was the result of gross negligence or willful misconduct.

813 E. A licensed home care organization or hospice shall notify and provide all students a copy of the
814 provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such
815 home care organization or hospice.

816 **§ 37.2-314. Background check required.**

817 A. As a condition of employment, the Department shall require any applicant who (i) accepts a
818 position of employment at a state facility and was not employed by that state facility prior to July 1,
819 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the
820 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to
821 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's
822 fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)
823 for the purpose of obtaining national criminal history record information regarding the applicant.

824 B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated
825 employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of
826 the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the
827 definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for
828 employment or (b) if such person continues on probation or parole or has failed to pay required court
829 costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.
830 *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of*
831 *§ 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in*
832 *clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver is granted*
833 *pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall apply. All*
834 *waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02.*

835 C. Notwithstanding the provisions of subsection B, the Department may hire for compensated
836 employment at an adult substance abuse or adult mental health treatment program a person who was
837 convicted of any violation of ~~§ 18.2-51.3~~; any misdemeanor violation of ~~§ 18.2-56~~ or ~~18.2-56.1~~ or
838 subsection A of ~~§ 18.2-57~~; any first offense misdemeanor violation of ~~§ 18.2-57.2~~; any violation of
839 ~~§ 18.2-60~~, ~~18.2-89~~, ~~18.2-92~~, or ~~18.2-94~~; any misdemeanor violation of ~~§ 18.2-282~~, ~~18.2-346~~, or
840 ~~18.2-346.01~~; any offense set forth in clause (iii) of the definition of barrier crime in ~~§ 19.2-392.02~~,
841 except an offense pursuant to subsection H1 or H2 of ~~§ 18.2-248~~; or any substantially similar offense
842 under the laws of another jurisdiction, if the Department determines, based upon a screening assessment,
843 that the criminal behavior was substantially related to the applicant's substance abuse or mental illness
844 and that the person has been successfully rehabilitated and is not a risk to individuals receiving services
845 based on his criminal history background and his substance abuse or mental illness history.

846 D. The Department and a screening contractor designated by the Department shall screen applicants
847 who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated
848 successfully and are not a risk to individuals receiving services based on their criminal history
849 backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the
850 applicant shall have completed all prison or jail terms; shall not be under probation or parole
851 supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and
852 court costs for any prior convictions; and shall have been free of parole or probation for at least five
853 years for all convictions. In addition to any supplementary information the Department or screening
854 contractor may require or the applicant may wish to present, the applicant shall provide to the screening
855 contractor a statement from his most recent probation or parole officer, if any, outlining his period of
856 supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony
857 conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to

858 pay the cost.

859 E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
860 no record exists, shall submit a report to the state facility or to the Department. If an applicant is denied
861 employment because of information appearing on his criminal history record and the applicant disputes
862 the information upon which the denial was based, the Central Criminal Records Exchange shall, upon
863 written request, furnish to the applicant the procedures for obtaining a copy of the criminal history
864 record from the FBI. The information provided to the state facility or Department shall not be
865 disseminated except as provided in this section.

866 F. D. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or
867 Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any
868 investigation of child abuse or neglect undertaken on them.

869 G. E. The Board may adopt regulations to comply with the provisions of this section. Copies of any
870 information received by the state facility or Department pursuant to this section shall be available to the
871 Department and to the applicable state facility but shall not be disseminated further, except as permitted
872 by state or federal law. The cost of obtaining the criminal history record and the central registry
873 information shall be borne by the applicant, unless the Department or state facility decides to pay the
874 cost.

875 **§ 37.2-408.1. Background check required; children's residential facilities.**

876 A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or
877 providing services on a regular basis, every children's residential facility that is regulated or operated by
878 the Department shall require any person who (i) accepts a position of employment at such a facility, (ii)
879 is currently employed by such a facility, (iii) volunteers for such a facility, or (iv) provides contractual
880 services directly to a juvenile for such a facility to submit to fingerprinting and to provide personal
881 descriptive information, to be forwarded along with the person's fingerprints through the Central
882 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal
883 history record information regarding the person. The children's residential facility shall inform the person
884 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and
885 completeness of any such report and obtain a prompt resolution before a final determination is made of
886 the person's eligibility to have responsibility for the safety and well-being of children. The person shall
887 provide the children's residential facility with a written statement or affirmation disclosing whether he
888 has ever been convicted of or is the subject of pending charges for any offense within or outside the
889 Commonwealth. The results of the criminal history background check must be received prior to
890 permitting a person to work in the children's residential facility.

891 The Central Criminal Records Exchange, upon receipt of a person's record or notification that no
892 record exists, shall forward it to the state agency that operates or regulates the children's residential
893 facility with which the person is affiliated. The state agency shall, upon receipt of a person's record
894 lacking disposition data, conduct research in whatever state and local recordkeeping systems are
895 available in order to obtain complete data. The state agency shall report to the children's facility whether
896 the person is eligible to have responsibility for the safety and well-being of children. Except as
897 otherwise provided in subsection B, no children's residential facility regulated or operated by the
898 Department shall hire for compensated employment or allow to volunteer or provide contractual services
899 persons who have been convicted of or are the subject of pending charges for (a) any offense set forth
900 in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set
901 forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the
902 application date for employment, to be a volunteer, or to provide contractual services or (2) such person
903 continues on probation or parole or has failed to pay required court costs for such offense set forth in
904 clause (iv) of the definition of barrier crime in § 19.2-392.02. *However, the Board shall adopt*
905 *regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons*
906 *may apply for employment or to volunteer or provide contractual services despite convictions of offenses*
907 *set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a waiver*
908 *is granted pursuant to such waiver process, the provisions of subsections I and J of § 19.2-392.02 shall*
909 *apply. All waiver applications shall be subject to the provisions of subsection K of § 19.2-392.02. The*
910 *provisions of this section also shall apply to structured residential programs, excluding secure detention*
911 *facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or*
912 *in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.*

913 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for
914 compensated employment or for volunteer or contractual service purposes persons who have been
915 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
916 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
917 unless the person committed such offense in the scope of his employment, volunteer, or contractual
918 services.

919 If the person is denied employment, or the opportunity to volunteer or provide services, at a
 920 children's residential facility because of information appearing on his criminal history record, and the
 921 person disputes the information upon which the denial was based, upon written request of the person the
 922 state agency shall furnish the person the procedures for obtaining his criminal history record from the
 923 Federal Bureau of Investigation. The information provided to the children's residential facility shall not
 924 be disseminated except as provided in this section.

925 C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's
 926 residential facility to obtain a copy of information from the central registry maintained pursuant to
 927 § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide
 928 the children's residential facility with a written statement or affirmation disclosing whether he has ever
 929 been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The
 930 children's residential facility shall receive the results of the central registry search prior to permitting a
 931 person to work. Children's residential facilities regulated or operated by the Department shall not hire for
 932 compensated employment, or allow to volunteer or provide contractual services, persons who have a
 933 founded case of child abuse or neglect.

934 D. The cost of obtaining the criminal history record and the central registry information shall be
 935 borne by the person unless the children's residential facility, at its option, decides to pay the cost.

936 **§ 37.2-416. Background checks required.**

937 A. As used in this section:

938 "Direct care position" means any position that includes responsibility for (i) treatment, case
 939 management, health, safety, development, or well-being of an individual receiving services or (ii)
 940 immediately supervising a person in a position with this responsibility.

941 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
 942 or adult mental health treatment position to another such position within the same licensee licensed
 943 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health
 944 treatment position in another office or program licensed pursuant to this article if the person employed
 945 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application
 946 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an
 947 adult substance abuse treatment position to any mental health or developmental services direct care
 948 position within the same licensee licensed pursuant to this article or (b) new employment in any mental
 949 health or developmental services direct care position in another office or program of the same licensee
 950 licensed pursuant to this article for which the person has previously worked in an adult substance abuse
 951 treatment position.

952 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance
 953 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and
 954 providing companionship, support, and other limited, basic assistance to a person with developmental
 955 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal
 956 responsibility.

957 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts
 958 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service
 959 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential
 960 service provider, (iv) any person employed by a sponsored residential service provider to provide
 961 services in the home, (v) any person who enters into a shared living arrangement with a person
 962 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the
 963 provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive
 964 information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of
 965 Investigation (FBI) for the purpose of obtaining national criminal history record information regarding
 966 the applicant. ~~Except as otherwise provided in subsection C, D, or F,~~ *The Board shall adopt regulations*
 967 *that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby such persons may*
 968 *apply for employment, for approval as a sponsored residential service provider, to enter into a shared*
 969 *living arrangement, or to serve in a direct care position under contract with a provider pursuant to this*
 970 *subsection despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02. If*
 971 *a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of §*
 972 *19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of*
 973 *§ 19.2-392.02. Unless an applicant has received such a waiver pursuant to this subsection, no provider*
 974 licensed pursuant to this article shall:

975 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
 976 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
 977 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
 978 application date for employment or (b) if such person continues on probation or parole or has failed to
 979 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §
 980 19.2-392.02;

981 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
 982 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
 983 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
 984 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
 985 years prior to the application date to be a sponsored residential service provider or (b) if such applicant
 986 continues on probation or parole or has failed to pay required court costs for such offense set forth in
 987 clause (iv) of the definition of barrier crime in § 19.2-392.02;

988 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
 989 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause
 990 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause
 991 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a
 992 shared living arrangement or (b) if such person continues on probation or parole or has failed to pay
 993 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §
 994 19.2-392.02; or

995 4. Allow any person under contract with the provider to serve in a direct care position who has been
 996 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §
 997 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02
 998 (a) in the five years prior to the application date for employment or (b) if such person continues on
 999 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
 1000 the definition of barrier crime in § 19.2-392.02.

1001 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
 1002 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed
 1003 pursuant to this article. If any applicant is denied employment because of information appearing on the
 1004 criminal history record and the applicant disputes the information upon which the denial was based, the
 1005 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures
 1006 for obtaining a copy of the criminal history record from the FBI. The information provided to the
 1007 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated
 1008 except as provided in this section.

1009 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
 1010 or permit any person under contract with the provider to serve in a direct care position or permit any
 1011 person employed by a temporary agency that has entered into a contract with the provider to provide
 1012 direct care services on behalf of the provider at adult substance abuse or adult mental health treatment
 1013 programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of
 1014 § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of
 1015 § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of
 1016 § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier
 1017 crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any
 1018 substantially similar offense under the laws of another jurisdiction, if the hiring provider determines,
 1019 based upon a screening assessment, that the criminal behavior was substantially related to the applicant's
 1020 substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk
 1021 to individuals receiving services based on his criminal history background and his substance abuse or
 1022 mental illness history.

1023 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
 1024 or permit any person under contract with the provider to serve in a direct care position or permit any
 1025 person employed by a temporary agency that has entered into a contract with the provider to provide
 1026 direct care services on behalf of the provider at adult substance abuse treatment facilities a person who
 1027 has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially
 1028 similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon
 1029 if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under
 1030 the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the
 1031 hiring provider determines, based upon a screening assessment, that the criminal behavior was
 1032 substantially related to the applicant's substance abuse and that the person has been successfully
 1033 rehabilitated and is not a risk to individuals receiving services based on his criminal history background
 1034 and his substance abuse history.

1035 E. The hiring provider and a screening contractor designated by the Department shall screen
 1036 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have
 1037 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal
 1038 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening,
 1039 the applicant shall have completed all prison or jail terms, shall not be under probation or parole
 1040 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court
 1041 costs for any prior convictions, and shall have been free of parole or probation for at least five years for

1042 all convictions. In addition to any supplementary information the provider or screening contractor may
 1043 require or the applicant may wish to present, the applicant shall provide to the screening contractor a
 1044 statement from his most recent probation or parole officer, if any, outlining his period of supervision
 1045 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The
 1046 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

1047 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated
 1048 employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared
 1049 living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care
 1050 position on behalf of the provider or permit any person employed by a temporary agency that has
 1051 entered into a contract with the provider to provide direct care services on behalf of the provider persons
 1052 who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or
 1053 any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed
 1054 following the conviction, unless the person committed the offense while employed in a direct care
 1055 position. A provider may also approve a person as a sponsored residential service provider if (a) any
 1056 adult living in the home of an applicant or (b) any person employed by the applicant to provide services
 1057 in the home in which sponsored residential services are provided has been convicted of not more than
 1058 one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the
 1059 laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person
 1060 committed the offense while employed in a direct care position.

1061 G. Providers licensed pursuant to this article also shall require, as a condition of employment,
 1062 approval as a sponsored residential service provider, permission to enter into a shared living arrangement
 1063 with a person receiving medical assistance services pursuant to a waiver, or permission for any person
 1064 under contract with the provider to serve in a direct care position, written consent and personal
 1065 information necessary to obtain a search of the registry of founded complaints of child abuse and
 1066 neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

1067 H. D. The cost of obtaining the criminal history record and search of the child abuse and neglect
 1068 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article
 1069 decides to pay the cost.

1070 I. E. A person who complies in good faith with the provisions of this section shall not be liable for
 1071 any civil damages for any act or omission in the performance of duties under this section unless the act
 1072 or omission was the result of gross negligence or willful misconduct.

1073 J. F. Notwithstanding any other provision of law, a provider licensed pursuant to this article that
 1074 provides services to individuals receiving services under the state plan for medical assistance services or
 1075 any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a
 1076 criminal history background check has been completed for a person described in subsection B for whom
 1077 a criminal history background check is required and (ii) whether the person described in subsection B is
 1078 eligible for employment, to provide sponsored residential services, to provide services in the home of a
 1079 sponsored residential service provider, or to enter into a shared living arrangement with a person
 1080 receiving medical assistance services pursuant to a waiver.

1081 K. G. Any person employed by a temporary agency that has entered into a contract with the provider
 1082 and who will serve in a direct care position on behalf of the provider licensed pursuant to this article
 1083 shall undergo a background check that shall include:

1084 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
 1085 § 19.2-389; and

1086 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
 1087 child abuse and neglect.

1088 ~~Except as otherwise provided in subsection C, D, or F, Unless an applicant has received a waiver~~
 1089 ~~pursuant to subsection B,~~ no provider licensed pursuant to this article shall permit any person employed
 1090 by a temporary agency that has entered into a contract with the provider to provide direct care services
 1091 on behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii),
 1092 or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of
 1093 the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for
 1094 employment or (b) if such person continues on probation or parole or has failed to pay required court
 1095 costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

1096 **§ 37.2-506. Background checks required.**

1097 A. As used in this section:

1098 "Direct care position" means any position that includes responsibility for (i) treatment, case
 1099 management, health, safety, development, or well-being of an individual receiving services or (ii)
 1100 immediately supervising a person in a position with this responsibility.

1101 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
 1102 or adult mental health treatment position to another such position within the same community services
 1103 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in

1104 another office or program of the same community services board if the person employed prior to July 1,
 1105 1999, had no convictions in the five years prior to the application date for employment. "Hire for
 1106 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
 1107 position to any mental health or developmental services direct care position within the same community
 1108 services board or (b) new employment in any mental health or developmental services direct care
 1109 position in another office or program of the same community services board for which the person has
 1110 previously worked in an adult substance abuse treatment position.

1111 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance
 1112 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and
 1113 providing companionship, support, and other limited, basic assistance to a person with developmental
 1114 disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal
 1115 responsibility.

1116 B. Every community services board shall require (i) any applicant who accepts employment in any
 1117 direct care position with the community services board, (ii) any applicant for approval as a sponsored
 1118 residential service provider, (iii) any adult living in the home of an applicant for approval as a
 1119 sponsored residential service provider, (iv) any person employed by a sponsored residential service
 1120 provider to provide services in the home, (v) any person who enters into a shared living arrangement
 1121 with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under
 1122 contract to serve in a direct care position on behalf of the community services board to submit to
 1123 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal
 1124 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national
 1125 criminal history record information regarding the applicant. ~~Except as otherwise provided in subsection~~
 1126 ~~C, D, or F, no~~ *No* community services board shall hire for compensated employment, approve as a
 1127 sponsored residential service provider, permit to enter into a shared living arrangement with a person
 1128 receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve
 1129 in a direct care position on behalf of the community services board persons who have been convicted of
 1130 (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or
 1131 (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five
 1132 years prior to the application date for employment, the application date to be a sponsored residential
 1133 service provider, or entering into a shared living arrangement or (2) if such person continues on
 1134 probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of
 1135 the definition of barrier crime in § 19.2-392.02. *However, the Board shall adopt regulations that*
 1136 *establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby persons may apply for*
 1137 *employment, for approval as a sponsored residential service provider, to enter into a shared living*
 1138 *arrangement, or to serve in a direct care position on behalf of the community services board pursuant*
 1139 *to this subsection despite convictions of offenses set forth in clauses (i), (ii), (iii), and (iv) in the*
 1140 *definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the*
 1141 *provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject*
 1142 *to the provisions of subsection K of § 19.2-392.02.*

1143 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
 1144 record exists, shall submit a report to the requesting executive director or personnel director of the
 1145 community services board. If any applicant is denied employment because of information appearing on
 1146 his criminal history record and the applicant disputes the information upon which the denial was based,
 1147 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the
 1148 procedures for obtaining a copy of the criminal history record from the FBI. The information provided
 1149 to the executive director or personnel director of any community services board shall not be
 1150 disseminated except as provided in this section.

1151 C. Notwithstanding the provisions of subsection B, the community services board may hire for
 1152 compensated employment or permit any person under contract to serve in a direct care position on
 1153 behalf of the community services board or permit any person employed by a temporary agency that has
 1154 entered into a contract with the community services board to provide direct care services on behalf of
 1155 the community services board at adult substance abuse or adult mental health treatment programs a
 1156 person who was convicted of any violation of ~~§ 18.2-51.3; any misdemeanor violation of § 18.2-56 or~~
 1157 ~~18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or~~
 1158 ~~18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in~~
 1159 ~~clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection~~
 1160 ~~H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if~~
 1161 ~~the hiring community services board determines, based upon a screening assessment, that the criminal~~
 1162 ~~behavior was substantially related to the applicant's substance abuse or mental illness and that the person~~
 1163 ~~has been successfully rehabilitated and is not a risk to individuals receiving services based on his~~
 1164 ~~criminal history background and his substance abuse or mental illness history.~~

1165 D. Notwithstanding the provisions of subsection B, the community services board may hire for
1166 compensated employment or permit any person under contract to serve in a direct care position on
1167 behalf of the community services board or permit any person employed by a temporary agency that has
1168 entered into a contract with the community services board to provide direct care services on behalf of
1169 the community services board at adult substance abuse treatment programs a person who has been
1170 convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar
1171 offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the
1172 offense was a felony committed in Virginia, or the equivalent if the person was convicted under the
1173 laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the
1174 hiring community services board determines, based upon a screening assessment, that the criminal
1175 behavior was substantially related to the applicant's substance abuse and that the person has been
1176 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history
1177 background and his substance abuse history.

1178 E. The community services board and a screening contractor designated by the Department shall
1179 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants
1180 have been rehabilitated successfully and are not a risk to individuals receiving services based on their
1181 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such
1182 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or
1183 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution,
1184 and court costs for any prior convictions, and shall have been free of parole or probation for at least
1185 five years for all convictions. In addition to any supplementary information the community services
1186 board or screening contractor may require or the applicant may wish to present, the applicant shall
1187 provide to the screening contractor a statement from his most recent probation or parole officer, if any,
1188 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in
1189 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless
1190 the board decides to pay the cost.

1191 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
1192 compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter
1193 into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care
1194 position on behalf of the community services board or permit any person employed by a temporary
1195 agency that has entered into a contract with the community services board to provide direct care services
1196 on behalf of the community services board persons who have been convicted of not more than one
1197 misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws
1198 of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed
1199 the offense while employed in a direct care position. A community services board may also approve a
1200 person as a sponsored residential service provider if (a) any adult living in the home of an applicant or
1201 (b) any person employed by the applicant to provide services in the home in which sponsored residential
1202 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
1203 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
1204 elapsed following the conviction, unless the person committed the offense while employed in a direct
1205 care position.

1206 G. Community services boards also shall require, as a condition of employment, approval as a
1207 sponsored residential service provider, permission to enter into a shared living arrangement with a
1208 person receiving medical assistance services pursuant to a waiver, or permission for any person under
1209 contract to serve in a direct care position on behalf of the community services board, written consent
1210 and personal information necessary to obtain a search of the registry of founded complaints of child
1211 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

1212 H. D. The cost of obtaining the criminal history record and search of the child abuse and neglect
1213 registry record shall be borne by the applicant, unless the community services board decides to pay the
1214 cost.

1215 I. E. Notwithstanding any other provision of law, a community services board that provides services
1216 to individuals receiving services under the state plan for medical assistance services or any waiver
1217 thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history
1218 background check has been completed for a person described in subsection B for whom a criminal
1219 history background check is required and (ii) whether the person described in subsection B is eligible
1220 for employment, to provide sponsored residential services, to provide services in the home of a
1221 sponsored residential service provider, or to enter into a shared living arrangement with a person
1222 receiving medical assistance services pursuant to a waiver.

1223 J. F. A person who complies in good faith with the provisions of this section shall not be liable for
1224 any civil damages for any act or omission in the performance of duties under this section unless the act
1225 or omission was the result of gross negligence or willful misconduct.

1226 K. G. Any person employed by a temporary agency that has entered into a contract with a

1227 community services board and who will serve in a direct care position on behalf of the community
 1228 services board shall undergo a background check that shall include:

1229 1. A criminal history records check through the Central Criminal Records Exchange pursuant to
 1230 § 19.2-389; and

1231 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
 1232 child abuse and neglect.

1233 ~~Except as otherwise provided in subsection C, D, or F~~ *Unless an applicant has received a waiver*
 1234 *pursuant subsection B*, no community services board shall permit any person employed by a temporary
 1235 agency that has entered into a contract with the community services board to provide direct care services
 1236 on behalf of the community services board if that person has been convicted of (i) any offense set forth
 1237 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
 1238 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
 1239 application date for employment, the application date to be a sponsored residential service provider, or
 1240 entering into a shared living arrangement or (b) if such person continues on probation or parole or has
 1241 failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier
 1242 crime in § 19.2-392.02.

1243 **§ 63.2-901.1. Criminal history and central registry check for placements of children.**

1244 A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations
 1245 adopted by the Board, criminal history record information from the Central Criminal Records Exchange
 1246 and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results
 1247 of a search of the child abuse and neglect central registry of any individual with whom the local board
 1248 or licensed child-placing agency is considering placing a child on an emergency, temporary or
 1249 permanent basis, including the birth parent of a child in foster care placement, unless the birth parent
 1250 has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth
 1251 parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians
 1252 pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such
 1253 background checks on all adult household members residing in the home of the individual with whom
 1254 the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be
 1255 at no cost to the individual. The local board or licensed child-placing agency shall pay for the national
 1256 fingerprint criminal history record check or may require such individual to pay the cost of the
 1257 fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees
 1258 assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for
 1259 responding to requests required by this section.

1260 B. Background checks pursuant to this section require the following:

1261 1. A sworn statement or affirmation disclosing whether or not the individual has a criminal
 1262 conviction or is the subject of any pending criminal charges within or outside the Commonwealth and
 1263 whether or not the individual has been the subject of a founded complaint of child abuse or neglect
 1264 within or outside the Commonwealth;

1265 2. That the individual submit to fingerprinting and provide personal descriptive information to be
 1266 forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the
 1267 Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The
 1268 local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a
 1269 copy of any background check report and to challenge the accuracy and completeness of any such report
 1270 and obtain a prompt resolution before a final decision is made of the individual's fitness to have
 1271 responsibility for the safety and well-being of children.

1272 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
 1273 record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an
 1274 individual's record lacking disposition data, conduct research in whatever state and local recordkeeping
 1275 systems are available in order to obtain complete data. The state agency shall report to the local board
 1276 or licensed child-placing agency whether the individual meets the criteria for having responsibility for
 1277 the safety and well-being of children based on whether or not the individual has ever been convicted of
 1278 or is the subject of pending charges for any ~~barrier~~ crime as ~~defined described~~ in ~~§ 19.2-392.02~~
 1279 *subsection E*. Copies of any information received by a local board or licensed child-placing agency
 1280 pursuant to this section shall be available to the state agency that regulates or operates such a
 1281 child-placing agency but shall not be disseminated further; and

1282 3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of
 1283 child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any
 1284 other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in
 1285 which a prospective parent or other adult in the home has resided in the preceding five years.

1286 C. In emergency circumstances, each local board may obtain, from a criminal justice agency,
 1287 criminal history record information from the Central Criminal Records Exchange and the Federal Bureau

1288 of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records
 1289 search authorized by this section. Within three days of placing a child, the local board shall require the
 1290 individual for whom a criminal history record information check was requested to submit to
 1291 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints
 1292 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
 1293 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed
 1294 from the home immediately if any adult resident fails to provide such fingerprints and written
 1295 permission to perform a criminal history record check when requested.

1296 D. Any individual with whom the local board is considering placing a child on an emergency basis
 1297 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh
 1298 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or
 1299 neglect. The search of the central registry must occur prior to emergency placement. Such central
 1300 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall
 1301 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded
 1302 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not
 1303 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

1304 E. The child-placing agency shall not approve a foster or adoptive home if any individual has been
 1305 convicted of any ~~barrier~~ crime as defined in ~~§ 19.2-392.02 listed under 42 U.S.C. § 671(a)(20) or~~
 1306 ~~regulations adopted thereunder~~ or is the subject of a founded complaint of abuse or neglect as
 1307 maintained in registries pursuant to § 63.2-1515 and ~~42 U.S.C.S. U.S.C. § 16901 et seq.~~ A child-placing
 1308 agency may approve as a foster parent an applicant who has been convicted of not more than one
 1309 misdemeanor as set out in § 18.2-57, or any substantially similar offense under the laws of another
 1310 jurisdiction, not involving the abuse, neglect, or moral turpitude of a minor, provided that 10 years have
 1311 elapsed following the conviction.

1312 F. A local board or child-placing agency may approve as a kinship foster care parent an applicant
 1313 who has been convicted of the following offenses, provided that 10 years have elapsed from the date of
 1314 the conviction and the local board or child-placing agency makes a specific finding that approving the
 1315 kinship foster care placement would not adversely affect the safety and well-being of the child: (i) any
 1316 offense set forth in clause (iv) of the definition of barrier crime in ~~§ 19.2-392.02~~ or (ii) any
 1317 misdemeanor offense under ~~§ 18.2-80, 18.2-81, 18.2-83, 18.2-87, 18.2-87.1, or 18.2-88~~ or any
 1318 substantially similar offense under the laws of another jurisdiction.

1319 G. Any individual participating in the Fostering Futures program, which allows local departments to
 1320 continue to provide foster care services to individuals who are 18 years of age or older but have not
 1321 reached 21 years of age, who is placed in a foster home shall be subject to the background check
 1322 requirements set forth in subsection B. The results of such background check shall be used for the sole
 1323 purpose of determining whether other children should be placed or remain in the same foster home as
 1324 the individual subject to the background check. The results of the background check shall not be used to
 1325 terminate or suspend the approval of the foster home pursuant to subsection E. For purposes of this
 1326 subsection, "individual participating in the Fostering Futures program" means a person who is 18 years
 1327 of age or older but has not reached 21 years of age and is receiving foster care services through the
 1328 Fostering Futures program.

1329 **§ 63.2-1601.1. Criminal history check for agency approved providers of services to adults.**

1330 A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal
 1331 history record information from the Central Criminal Records Exchange of any individual the local
 1332 board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult
 1333 foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on
 1334 all adult household members residing in the home of the individual with whom the adult is to be placed.
 1335 The local board shall not hire for compensated employment any persons who have been convicted of
 1336 any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. *However, the*
 1337 *Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02*
 1338 *whereby persons may apply for employment despite convictions of offenses set forth in clause (i) of the*
 1339 *definition of barrier crime in § 19.2-392.02 and a local board may hire persons who have received such*
 1340 *waivers from the Department. If a waiver is granted pursuant to such waiver process, the provisions of*
 1341 *subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the*
 1342 *provisions of subsection K of § 19.2-392.02.* If approval as an agency approved provider is denied
 1343 because of information obtained through a Central Criminal Records Exchange search, the local board,
 1344 upon request, shall provide a copy of the information obtained to the individual who is the subject of
 1345 the search. Further dissemination of the criminal history record information is prohibited.

1346 B. In emergency circumstances, each local board may obtain from a criminal justice agency the
 1347 criminal history record information from the Central Criminal Records Exchange for the criminal records
 1348 search authorized by this section. The provision of home-based services shall be immediately terminated
 1349 or the adult shall be removed from the home immediately, if any adult resident has been convicted of

1350 any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 *unless such adult*
 1351 *resident has received a waiver pursuant to subsection A.*

1352 **§ 63.2-1720. Assisted living facilities and adult day care centers.**

1353 A. No assisted living facility or adult day care center shall hire for compensated employment or
 1354 continue to employ persons who have been convicted of any offense set forth in clause (i) of the
 1355 definition of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed
 1356 in accordance with the provisions of this chapter shall not hire for compensated employment or continue
 1357 to employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii)
 1358 are the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.
 1359 *However, the Board shall adopt regulations that establish a waiver process pursuant to subsection H of*
 1360 *§ 19.2-392.02 whereby persons may apply for employment despite convictions of offenses set forth in the*
 1361 *definition of barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the*
 1362 *provisions of subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject*
 1363 *to the provisions of subsection K of § 19.2-392.02. All applicants for employment shall undergo*
 1364 *background checks pursuant to subsection C B.*

1365 B. ~~A licensed assisted living facility or adult day care center may hire an applicant or continue to~~
 1366 ~~employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any~~
 1367 ~~substantially similar offense under the laws of another jurisdiction, if five years have elapsed following~~
 1368 ~~the conviction.~~

1369 C. Background checks pursuant to subsection A require:

1370 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
 1371 subject of any pending criminal charges within or outside the Commonwealth and, in the case of
 1372 licensed child-placing agencies or independent foster homes, whether or not the person has been the
 1373 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

1374 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
 1375 § 19.2-389; and

1376 3. In the case of licensed child-placing agencies or independent foster homes, a search of the central
 1377 registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

1378 D. ~~C.~~ Any person making a materially false statement regarding the sworn statement or affirmation
 1379 provided pursuant to subdivision C B 1 is guilty of a Class 1 misdemeanor.

1380 E. ~~D.~~ A licensed assisted living facility, licensed adult day care center, licensed child-placing agency,
 1381 or licensed independent foster home shall obtain for any compensated employees within 30 days of
 1382 employment (i) an original criminal record clearance with respect to convictions for any offense set forth
 1383 in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record
 1384 from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies or
 1385 independent foster homes, (a) an original criminal record clearance with respect to any barrier crime as
 1386 defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
 1387 Exchange and (b) a copy of the information from the central registry for any compensated employee
 1388 within 30 days of employment. However, no employee shall be permitted to work in a position that
 1389 involves direct contact with a person or child receiving services until an original criminal record
 1390 clearance or original criminal history record has been received, unless such person works under the
 1391 direct supervision of another employee for whom a background check has been completed in accordance
 1392 with the requirements of this section. If an applicant is denied employment because of information from
 1393 the central registry or convictions appearing on his criminal history record, the licensed assisted living
 1394 facility, adult day care center, child-placing agency, or independent foster home shall provide a copy of
 1395 the information obtained from the central registry or the Central Criminal Records Exchange or both to
 1396 the applicant.

1397 F. ~~E.~~ No volunteer who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or
 1398 (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth
 1399 shall be permitted to serve in a licensed child-placing agency or independent foster home. *However, the*
 1400 *Board shall adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02*
 1401 *whereby volunteers may apply to volunteer despite convictions of offenses set forth in the definition of*
 1402 *barrier crime in § 19.2-392.02. If a waiver is granted pursuant to such waiver process, the provisions of*
 1403 *subsections I and J of § 19.2-392.02 shall apply. All waiver applications shall be subject to the*
 1404 *provisions of subsection K of § 19.2-392.02. Any person desiring to volunteer at a licensed child-placing*
 1405 *agency or independent foster home shall provide the agency, system, or home with a sworn statement or*
 1406 *affirmation pursuant to subdivision C B 1. Such licensed child-placing agency or independent foster*
 1407 *home shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of*
 1408 *(a) the information from the central registry and (b) an original criminal record clearance with respect to*
 1409 *any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central*
 1410 *Criminal Records Exchange. Any person making a materially false statement regarding the sworn*

1411 statement or affirmation provided pursuant to subdivision C B 1 is guilty of a Class 1 misdemeanor. If a
 1412 volunteer is denied service because of information from the central registry or convictions appearing on
 1413 his criminal history record, such licensed child-placing agency or independent foster home shall provide
 1414 a copy of the information obtained from the central registry or the Central Criminal Records Exchange
 1415 or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be
 1416 alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a
 1417 child attending a licensed child-placing agency or independent foster home, whether or not such
 1418 parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is
 1419 someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a
 1420 program that operates no more than four hours per day, provided that the parent-volunteer works under
 1421 the direct supervision of a person who has received a clearance pursuant to this section.

1422 ~~G. F.~~ No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult
 1423 day care center without the permission or under the supervision of a person who has received a
 1424 clearance pursuant to this section.

1425 ~~H. G.~~ Further dissemination of the background check information is prohibited other than to the
 1426 Commissioner's representative or a federal or state authority or court as may be required to comply with
 1427 an express requirement of law for such further dissemination.

1428 ~~I. H.~~ Notwithstanding any other provision of law, a licensed adult day care center that provides
 1429 services to individuals receiving services under the state plan for medical assistance services or any
 1430 waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal
 1431 history background check has been completed for an employee in accordance with this section and (ii)
 1432 whether such employee is eligible for employment.

1433 ~~J. I.~~ A licensed assisted living facility shall notify and provide all students a copy of the provisions
 1434 of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted
 1435 living facility.

1436 ~~K. J.~~ A person who complies in good faith with the provisions of this section shall not be liable for
 1437 any civil damages for any act or omission in the performance of duties under this section unless the act
 1438 or omission was the result of gross negligence or willful misconduct.

1439 **§ 63.2-1721. Background check upon application for licensure as a child-placing agency, etc.;**
 1440 **penalty.**

1441 A. Upon application for licensure as a child-placing agency or independent foster home, (i) all
 1442 applicants and (ii) agents at the time of application who are or will be involved in the day-to-day
 1443 operations of the child-placing agency or independent foster home or who are or will be alone with, in
 1444 control of, or supervising one or more of the children shall undergo a background check pursuant to
 1445 subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a
 1446 background check pursuant to subsection B. *The Board shall adopt regulations that establish a waiver*
 1447 *process pursuant to subsection H of § 19.2-392.02 whereby such applicants and agents may apply for*
 1448 *employment despite convictions of offenses set forth in the definition of barrier crime in § 19.2-392.02.*
 1449 *If a waiver is granted pursuant to such waiver process, the provisions of subsections I and J of*
 1450 *§ 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of*
 1451 *§ 19.2-392.02.* In addition, foster or adoptive parents requesting approval by child-placing agencies shall
 1452 undergo background checks pursuant to subsection B prior to their approval.

1453 B. Background checks pursuant to subsection A require:

1454 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
 1455 subject of any pending criminal charges within or outside the Commonwealth and whether or not the
 1456 person has been the subject of a founded complaint of child abuse or neglect within or outside the
 1457 Commonwealth;

1458 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
 1459 § 19.2-389; and

1460 3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a
 1461 search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child
 1462 abuse and neglect.

1463 C. The person required to have a background check pursuant to subsection A shall submit the
 1464 background check information required in subsection B to the Commissioner's representative prior to
 1465 issuance of a license, registration, or approval. The applicant, other than an applicant for licensure as an
 1466 assisted living facility *or foster or adoptive parents*, shall provide an original criminal record clearance
 1467 with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from
 1468 the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall
 1469 provide an original criminal record clearance with respect to any offense set forth in clause (i) of the
 1470 definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central
 1471 Criminal Records Exchange. Any person making a materially false statement regarding the sworn
 1472 statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any

1473 person specified in subsection A, other than an applicant for licensure as an assisted living facility *or*
 1474 *foster or adoptive parents*, required to have a background check (i) has been convicted of any barrier
 1475 crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect
 1476 within or outside the Commonwealth, and such person has not been granted a waiver by the
 1477 Commissioner pursuant to § 63.2-1723 or is ~~not subject to an exception in subsection E, F, G, or H (a),~~
 1478 *has not been granted a waiver pursuant to subsection A*, the Commissioner shall not issue a license to a
 1479 child-placing agency or independent foster home ~~or (b) a child-placing agency shall not approve an~~
 1480 ~~adoptive or foster home~~. If any applicant for licensure as an assisted living facility required to have a
 1481 background check has been convicted of any offense set forth in clause (i) of the definition of barrier
 1482 crime in § 19.2-392.02 *and has not been granted a waiver pursuant to subsection A*, the Commissioner
 1483 shall not issue a license to an assisted living facility.

1484 D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed
 1485 child-placing agency or independent foster home; be alone with, in control of, or supervising one or
 1486 more children receiving services from a licensed child-placing agency or independent foster home; or be
 1487 permitted to work in a position that involves direct contact with a person receiving services without first
 1488 having completed background checks pursuant to subsection B unless such person is directly supervised
 1489 by another person for whom a background check has been completed in accordance with the
 1490 requirements of this section.

1491 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
 1492 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one
 1493 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of
 1494 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years
 1495 have elapsed following the conviction.

1496 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
 1497 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking
 1498 and entering a dwelling home or other structure with intent to commit larceny, or any substantially
 1499 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the
 1500 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

1501 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
 1502 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
 1503 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
 1504 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or
 1505 eight years have elapsed following the conviction and the applicant (i) has complied with all obligations
 1506 imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has
 1507 completed a drug test administered by a laboratory or medical professional within 90 days prior to being
 1508 approved, and such test returned with a negative result; and (iv) complies with any other obligations as
 1509 determined by the Department.

1510 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
 1511 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
 1512 (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
 1513 Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

1514 I. If an applicant is denied licensure, registration or approval because of information from the central
 1515 registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy
 1516 of the information obtained from the central registry or the Central Criminal Records Exchange or both
 1517 to the applicant.

1518 J. F. Further dissemination of the background check information is prohibited other than to the
 1519 Commissioner's representative or a federal or state authority or court as may be required to comply with
 1520 an express requirement of law for such further dissemination.

1521 **§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain**
 1522 **background check.**

1523 A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted
 1524 living facility, or adult day care center and a child-placing agency may revoke the approval of a foster
 1525 home if the assisted living facility, adult day care center, child welfare agency, or foster home has
 1526 knowledge that a person specified in § 63.2-1720 or 63.2-1721 required to have a background check (i)
 1527 has been convicted of any barrier crime as defined in § 19.2-392.02 *and has not been granted a waiver*
 1528 *pursuant to subsection H of § 19.2-392.02* or (ii) in the case of a child welfare agency or foster home,
 1529 is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth,
 1530 and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 ~~or is not~~
 1531 ~~subject to the exceptions in subsection B of § 63.2-1720 or subsection E, F, G, or H of § 63.2-1721~~, and
 1532 the facility, center, or agency refuses to separate such person from employment or service or allows the
 1533 household member to continue to reside in the home.

1534 B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for
 1535 denial, revocation, or termination of a license, registration, or approval or any contract with the
 1536 Department or a local department to provide child care services to clients of the Department or local
 1537 department. No violation shall occur if the assisted living facility, adult day care center, child-placing
 1538 agency, or independent foster home has applied for the background check timely and it has not been
 1539 obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

1540 **§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

1541 A. Any person who seeks to operate or volunteer or work at a child welfare agency and who is
 1542 disqualified because of a criminal conviction pursuant to §§ 63.2-1720 and 63.2-1721; *and has not*
 1543 *received a waiver pursuant to subsection A of § 63.2-1720 or subsection A of § 63.2-1721* may apply in
 1544 writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the
 1545 Commissioner determines that (i) the person is of good moral character and reputation and (ii) the
 1546 waiver would not adversely affect the safety and well-being of children in the person's care. ~~The~~
 1547 ~~Commissioner shall not grant a waiver to any person who has been convicted of any barrier crime as~~
 1548 ~~defined in § 19.2-392.02.~~ The child welfare agency shall notify in writing every parent and guardian of
 1549 the children in its care of any waiver granted for its operators, employees, or volunteers.

1550 B. The Board shall adopt regulations to implement the provisions of this section.

1551 **§ 63.2-1726. Background check required; children's residential facilities.**

1552 A. As a condition of employment, volunteering, or providing services on a regular basis, every
 1553 children's residential facility that is regulated or operated by the Departments of Social Services,
 1554 Education, Military Affairs, or Behavioral Health and Developmental Services shall require any
 1555 individual who (i) accepts a position of employment at such a facility, (ii) is employed by such a
 1556 facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for
 1557 such a facility to submit to fingerprinting and to provide personal descriptive information, to be
 1558 forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the
 1559 Federal Bureau of Investigation for the purpose of obtaining criminal history record information
 1560 regarding such applicant. The children's residential facility shall inform the applicant that he is entitled
 1561 to obtain a copy of any background check report and to challenge the accuracy and completeness of any
 1562 such report and obtain a prompt resolution before a final determination is made of the applicant's
 1563 eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the
 1564 children's residential facility with a written statement or affirmation disclosing whether he has ever been
 1565 convicted of or is the subject of pending charges for any offense within or outside the Commonwealth.
 1566 The results of the criminal history background check must be received prior to permitting an applicant
 1567 to work in the children's residential facility.

1568 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
 1569 record exists, shall forward it to the state agency ~~which~~ *that* operates or regulates the children's
 1570 residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an
 1571 applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping
 1572 systems are available in order to obtain complete data. The state agency shall report to the children's
 1573 facility whether the applicant is eligible to have responsibility for the safety and well-being of children.
 1574 Except as otherwise provided in subsection B, no children's residential facility regulated or operated by
 1575 the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or
 1576 Social Services shall hire for compensated employment or allow to volunteer or provide contractual
 1577 services persons who have been convicted of or are the subject of pending charges for (a) any offense
 1578 set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any
 1579 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years
 1580 prior to the application date for employment, to be a volunteer, or to provide contractual services or (2)
 1581 such person continues on probation or parole or has failed to pay required court costs for such offense
 1582 set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. *However, the Board shall*
 1583 *adopt regulations that establish a waiver process pursuant to subsection H of § 19.2-392.02 whereby*
 1584 *persons may apply for employment or to volunteer or provide contractual services despite convictions of*
 1585 *offenses set forth in clauses (i), (ii), (iii), and (iv) in the definition of barrier crime in § 19.2-392.02. If a*
 1586 *waiver is granted pursuant to such waiver process, the provisions of subsections I and J of*
 1587 *§ 19.2-392.02 shall apply. All waiver applications shall be subject to the provisions of subsection K of*
 1588 *§ 19.2-392.02.* The provisions of this section also shall apply to residential programs established
 1589 pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the
 1590 court that alleges the juvenile is delinquent or in need of services or supervision and to local secure
 1591 detention facilities, provided, however, that the provisions of this section related to local secure detention
 1592 facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of
 1593 employment at such local secure detention facility, volunteers at such local secure detention facility on a
 1594 regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual
 1595 services directly to a juvenile at a local secure detention facility on a regular basis and will be alone

1596 with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state
 1597 or local agency that regulates or operates the local secure detention facility shall process the criminal
 1598 history record information regarding such applicant in accordance with this subsection and subsection B.

1599 B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for
 1600 compensated employment or for volunteer or contractual service purposes persons who have been
 1601 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially
 1602 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,
 1603 unless the person committed such offense in the scope of his employment, volunteer, or contractual
 1604 services.

1605 If the applicant is denied employment or the opportunity to volunteer or provide services at a
 1606 children's residential facility because of information appearing on his criminal history record, and the
 1607 applicant disputes the information upon which the denial was based, upon written request of the
 1608 applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history
 1609 record from the Federal Bureau of Investigation. The information provided to the children's residential
 1610 facility shall not be disseminated except as provided in this section.

1611 C. Those individuals listed in clauses (i) through (iv) of subsection A also shall authorize the
 1612 children's residential facility to obtain a copy of information from the central registry maintained
 1613 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The
 1614 applicant shall provide the children's residential facility with a written statement or affirmation disclosing
 1615 whether he has ever been the subject of a founded case of child abuse or neglect within or outside the
 1616 Commonwealth. The children's residential facility shall receive the results of the central registry search
 1617 prior to permitting an applicant to work. Children's residential facilities regulated or operated by the
 1618 Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social
 1619 Services shall not hire for compensated employment or allow to volunteer or provide contractual
 1620 services, persons who have a founded case of child abuse or neglect. Every residential facility for
 1621 juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to
 1622 obtain a copy of the information from the central registry.

1623 D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and
 1624 Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with
 1625 the provisions of this section. Copies of any information received by a children's residential facility
 1626 pursuant to this section shall be available to the agency that regulates or operates such facility but shall
 1627 not be disseminated further. The cost of obtaining the criminal history record and the central registry
 1628 information shall be borne by the employee or volunteer unless the children's residential facility, at its
 1629 option, decides to pay the cost.

1630 2. That the provisions of the first enactment of this act shall become effective on the earlier of (i)
 1631 the first day of the fourth month following notification of the Chairmen of the Senate Committee
 1632 on the Judiciary and the House Committee for Courts of Justice by the Superintendent of State
 1633 Police that the Department of State Police has implemented the necessary system upgrades as
 1634 required by this act or (ii) July 1, 2025, except that provisions in §§ 63.2-901.1 and 63.2-1721 of
 1635 the Code of Virginia, as amended by this act, relating to foster and adoptive parents shall become
 1636 effective in due course. The Boards of Behavioral Health and Developmental Services, Education,
 1637 Health, and Social Services shall promulgate regulations to implement the provisions of this act by
 1638 December 1, 2024, to be effective by the effective date of the first enactment of this act.

1639 3. That any individual with a barrier crime conviction serving in a position pursuant to a current
 1640 exception, waiver, or screening process as set out in §§ 22.1-289.035, 22.1-289.038, 32.1-126.01,
 1641 32.1-162.9:1, 37.2-314, 37.2-408.1, 37.2-416, 37.2-506, 63.2-1720, and 63.2-1726 of the Code of
 1642 Virginia, as amended by this act, up until the first date of enactment of this act when the waiver
 1643 process becomes effective, shall continue to be subject to such exception, waiver, or screening
 1644 process and shall not be terminated upon enactment of this law or required to apply for a barrier
 1645 crime conviction waiver so long as he continues to be employed by the same employer. In its
 1646 regulations, the Boards of Behavioral Health and Developmental Services, Education, Health, and
 1647 Social Services shall specify what occurs in situations when there is a change in ownership of the
 1648 employer. In its regulations, the Boards of Behavioral Health and Developmental Services,
 1649 Education, Health, and Social Services may require that an individual subject to such waiver,
 1650 exception, or screening process shall have one year after the effective date of the first enactment of
 1651 this act when the waiver process becomes effective, to file an application for a new waiver
 1652 pursuant to the regulations set out by each board and that such individual shall not be terminated
 1653 for lacking such waiver while such application is pending.

1654 4. That, upon the effective date of the first enactment of this act when the waiver process becomes
 1655 effective, the Departments of Behavioral Health and Developmental Services, Education, Health,
 1656 and Social Services shall begin accepting at least some or all applications for waivers as directed

1657 in subsection H of § 19.2-392.02 of the Code of Virginia, as amended by this act, pursuant to the
1658 regulations set out by the Boards of Behavioral Health and Developmental Services, Education,
1659 Health, and Social Services as directed in § 19.2-392.02 of the Code of Virginia, as amended by
1660 this act. However, if necessary, to prevent overwhelming department resources for receiving
1661 applications and to ensure that applications are answered in a timely manner, in its regulations
1662 each board may set out a phased implementation of such regulations that shall not exceed a period
1663 of two years after the date of enactment of this act before the waiver application process under
1664 each department shall be fully functioning.

1665 5. That the Secretaries of Education, Health and Human Resources, and Labor (the Secretaries)
1666 shall provide recommendations to the Chairmen of the House Committees on Labor and
1667 Commerce, Education, and Health, Welfare and Institutions and the Senate Committees on
1668 Commerce and Labor, Education and Health, and Rehabilitation and Social Services on the
1669 development of a navigation system for assisting applicants in navigating the waiver processes
1670 across each department no later than July 1, 2024. Such recommendations may include a
1671 recommendation for a third party or state agency that may oversee the navigation system, how
1672 such system may function, procurement for the system, the assessment that a navigation system is
1673 unnecessary, and any other information determined by the Secretaries.

1674 6. That the Department of State Police shall implement any necessary enhancements to the
1675 Criminal History and Rap Back Information System, including the ability to add or remove
1676 barrier crime conviction waivers, by the effective date of the first enactment of this act.